

NO. PD-0561-20

IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

FILED
COURT OF CRIMINAL APPEALS
7/7/2021
DEANA WILLIAMSON, CLERK

JACOB MATTHEW JOHNSON
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

On Appeal from cause number 14-18-00361-CR
in the Fourteenth Court of Appeals, Houston, Texas.
(trial court cause number 224018 in the County Court
at Law No. 1, Brazoria County, Texas)

**MR. JOHNSON'S UNOPPOSED MOTION TO RECALL AND STAY THE
MANDATE**

TO THE HONORABLE JUDGES OF SAID COURT:

Jacob Matthew Johnson, Appellant in the above-entitled and numbered cause,
by and through his attorney Jonathan Landers, submits this Unopposed Motion to
Recall and Stay the Mandate and in support thereof shows the following:

1. Pursuant to Texas Rules of Appellate Procedure 18.2, Rule 19, and this Court's
continuing jurisdiction, Appellant moves this Court to stay its mandate in this
matter and allow Appellant to file a petition for writ of certiorari in the United
States Supreme Court. This Court's opinion was issued on May 12, 2021, and

the mandate in this cause issued on June 8, 2021. This Court retains plenary power over its judgment until “60 days after judgment,” or July 11, 2021. *See* Tex. R. App. P. 19.1. This Court retains jurisdiction to recall and stay the mandate for opinions issued during the current term of the Court. *Deramee v. State*, 379 S.W.2d 908, 909 (Tex. Crim. App. 1964) (holding the same).¹

2. On or about September 1, 2021, Appellant intends to file a petition for writ of certiorari in the U.S. Supreme Court. The petition will likely ask the Supreme Court to review this Court’s decision that the limited testimony concerning the park and ride as a “high crime area” coupled with the otherwise innocuous facts observed by the officer provided the officer with a reasonable suspicion to detain Mr. Johnson. *See Johnson v. State*, 622 S.W.3d 378 (Tex. Crim. App. 2021).
3. Texas Rule of Appellate Procedure 18.2 provides that this court “may grant a stay if it finds that the issues are substantial and that petitioner or others would incur serious hardship from the mandate’s issuance if the United States Supreme Court were later to reverse the judgment.” Tex. R. App. P. 18.2. The issues in this case are substantial enough that (1) this Court granted review to reverse the Court of Appeal’s holding, (2) Judge Walker wrote an impassioned dissent thereto, and

¹ Tex. R. App. P. 19.3 allows the court to recall its mandate. Assuming for the sake of argument that the motion to stay the mandate was due before the court issued its mandate, even though the Rules of Appellate Procedure provide no deadline for a motion to stay the mandate, the Rules of Appellate procedure generally allow the Court to consider motions within the time of its plenary power and specifically with regard to a motion to stay the mandate allow for the court to recall its mandate outside of normal plenary power time limits. Tex. R. App. P. 19.1(b) and 19.3(b).

(3) Judge McClure also dissented.

4. Further, based upon Mr. Johnson's financial situation (worsened by the pandemic), if this court does not stay its mandate, Appellant will be prejudiced and incur serious hardship because paying the remaining fine and court cost (which total over \$800) will be very difficult for him. Indeed, Mr. Johnson does not believe he could pay both the fine, court cost, and the \$300 filing fee for the petition for writ of certiorari. Undersigned counsel has agreed to represent Mr. Johnson without charge before the Supreme Court, and if Mr. Johnson does not have to pay the outstanding fine and court cost it appears he will be able to pay the filing fee for the petition for writ of certiorari. It should also be noted that undersigned counsel's agreement to represent Mr. Johnson was not formalized until June 8, 2021, the same day the mandate issued in this case.

For these reasons, Jacob Matthew Johnson asks the Court to grant this motion and stay its mandate for 90-days from today's date pursuant to Texas Rule of Appellate Procedure 18.2.

Respectfully submitted,

/S/Jonathan Landers

Jonathan Landers

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LEAD ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of this motion has been delivered to all counsel of record on June 30, 2021, through the e-file system.

/s/ Jonathan Landers
Jonathan Landers

CERTIFICATE OF CONFERENCE

I certify that on June 30, 2021, I emailed with John Messinger and he informed me that he is not opposed.

/s/ Jonathan Landers
Jonathan Landers



VERIFICATION

My name is Jacob Johnson, my date of birth is June 23, 1992, and my address is 2903 Julie Ann Dr., Pearland, Texas. I declare under penalty of perjury that the facts contained in paragraph 4 of the motion to recall and stay the mandate are true and correct to the best of my knowledge.

Executed in Brazoria County, State of Texas, on the June 30th, 2021.



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Associated Case Party: JacobMatthewJohnson

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